

# **EXHIBIT 22**

**In the Matter of**

Case No. 18-cv-05775 (ERK)(TAM)

STAR AUTO SALES OF BAYSIDE, INC., et al.

v.

VOYNOW, BAYARD, WHYTE AND COMPANY LLP, et al.

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**Deposition of Stephen J. Scherf**

*Thursday, December 14, 2023*

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The Little  
Reporting  
Company

469 Seventh Avenue  
12th Floor  
New York, NY 10018  
tel: 646-650-5055  
[www.littlereporting.com](http://www.littlereporting.com)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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STAR AUTO SALES OF BAYSIDE, INC.  
(d/b/a STAR TOYOTA OF BAYSIDE),  
STAR Auto Sales OF QUEENS, LLC  
(d/b/a STAR SUBARU), STAR HYUNDAI  
LLC (d/b/a STAR HYUNDAI), STAR  
NISSAN, INC. (d/b/a STAR NISSAN),  
METRO CHRYSLER PLYMOUTH INC. (d/b/a  
STAR CHRYSLER JEEP DODGE) STAR Auto  
SALES OF QUEENS COUNTY LLC (d/b/a  
STAR FIAT) and STAR AUTO SALES OF  
QUEENS VILLAGE LLC (d/b/a STAR  
MITSUBISHI),

Plaintiffs,

-against-

Case No.  
18-cv-05775  
(ERK) (TAM)

VOYNOW, BAYARD, WHYTE and COMPANY  
LLP, HUGH WHYTE, and RANDALL  
FRANZEN,

Defendants.

-----x  
December 14, 2023  
8:37 a.m.

Remote Videotaped Deposition of STEPHEN J.  
SCHERF, taken by Plaintiffs, pursuant to Notice,  
held via Zoom before Lisa Hiesiger, a Shorthand  
Reporter and Notary Public within and for the  
State of New York.

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1 Scherf

2 Q. I'm sorry, there's an engagement  
3 letter for the tax services?

4 A. Correct.

5 Q. You're saying unsigned letter?

6 A. Yes, there's an unsigned letter for  
7 the tax engagement services. There are e-mails  
8 or billing records that describe the scope of  
9 certain other services that were provided, those  
10 would have been consulting services by  
11 definition, and the standards essentially don't  
12 require an engagement letter for that. That  
13 understanding can be an oral understanding as to  
14 what you're doing if somebody says to you come up  
15 and oversee this sales tax audit, then you do  
16 that and then you bill them separately.

17 So there is in some cases e-mails or  
18 are billing records or conversations that I saw  
19 people testify about what other work was done  
20 that was agreed to between the plaintiffs and  
21 Voynow. So I don't know how else to answer your  
22 question.

23 Q. Mr. Scherf, other than tax review and  
24 audit engagements, is it fair to say that all  
25 other engagements of an accounting firm fall

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1 Scherf

2 those were like tax audits or something like  
3 that, and so there would be a specific time and  
4 an end to that tax audit, for example, or DOL  
5 audit or when Voynow provided consulting services  
6 for training, the new controller. So there would  
7 be a start and an end to each of those  
8 engagements that would be clear because they  
9 would just start and end.

10 Q. A consulting engagement could be  
11 ongoing, correct?

12 A. Look, theoretically it could, but you  
13 would anticipate that it would be done in phases  
14 and so that at the end of each phase either a  
15 written or oral report would be provided to the  
16 client to tell them the progress or what the  
17 observations were during that consulting  
18 engagement.

19 Q. I want to refer you to Exhibit 204,  
20 this is a new exhibit.

21 (Exhibit 204, Nissan Rebate and  
22 Incentive Schedule 21 Bates stamped Voynow  
23 006616, was so marked for identification,  
24 as of this date.)

25 Q. Mr. Scherf, I show you what has been

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2 marked as Exhibit 204 for identification, it is a  
3 Nissan rebate and incentive schedule, Schedule  
4 21, it's Voynow Bates stamped 006616, it is the  
5 first page, it goes on for eight pages. If you  
6 go to the top.

7 MS. FITZGERALD: Is it in sequential  
8 as far as Bates stamp production?

9 MR. MULÈ: I believe so, let's just  
10 double-check. All of them except for the  
11 last page.

12 Q. So on the top left it has a print  
13 date of November 23rd, 2015, and if you look at  
14 the first page, you see various columns, and  
15 there's a column that's headed Serial Number, do  
16 you see that?

17 A. Correct.

18 Q. Now, there's a notation for the first  
19 three rows and it says "wrong control number"  
20 with a question mark before it, do you see that?

21 A. That's what it says, was that the  
22 question?

23 Q. Yes. I'm asking do you see that?

24 A. Yes, I can see that, that's what that  
25 appears to be.

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2 Q. On the fourth row, in serial number,  
3 it has a bunch of numbers. Are you aware of what  
4 a VIN number is?

5 A. That's the vehicle identification  
6 number.

7 Q. It's an acronym, right, VIN for V for  
8 vehicle, I for identification, and N for number,  
9 right?

10 A. Correct.

11 Q. The last acronym stands for number,  
12 right?

13 A. Correct.

14 Q. So if you look at the serial number  
15 column, aside from those first three rows, in  
16 that column under serial number, those are all  
17 VIN numbers, are you aware of that?

18 A. If you're representing that they're  
19 VIN numbers, they look like VIN numbers to me  
20 based on looking at my owner's card, for example.  
21 I'll take your word for the fact that they look  
22 like VIN numbers.

23 MS. FITZGERALD: Can we enlarge it a  
24 little bit?

25 MR. MULE: Sure.

1 Scherf

2 Q. I want to go to the last page of this  
3 schedule, you see the last page of this schedule,  
4 it has five entries that if you look at the  
5 serial number again, it's different from all the  
6 others. If you look at, aside from the first  
7 three on page 1 and these last five on page 7  
8 here, all of them have VIN numbers, but these do  
9 not, and you see that there's a circle and it  
10 says status, do you see that?

11 A. Right, which means that it looks like  
12 Voynow inquired about that and came to the  
13 conclusion that those entries were okay.

14 Q. You deduce that from it says OK on  
15 the right side and it's circled, right?

16 A. Right.

17 Q. If you look at the last entry, it has  
18 November 1, 2015 and it says bonus 1015, do you  
19 see that?

20 A. I do see that.

21 Q. In your experience that is certainly  
22 not a VIN number, right?

23 A. That's not a VIN number, correct.

24 Q. Reviewing this, you would agree that  
25 it did trigger some inquiry by Voynow, correct?

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2                   A.    That's what it appears based on this  
3 work paper, and the inquiry in preparing the tax  
4 return appears to indicate that everything is  
5 okay and that there's not an adjustment needed  
6 for tax purposes.

7 Q. Now, when there's an inquiry, there's  
8 a duty to obtain sufficient relevant data to  
9 afford a reasonable basis for the conclusion here  
10 that the entry was okay, right?

11                   A.     Look, if in an inquiry the answer can  
12                   be the sufficient relevant data, it doesn't  
13                   necessarily mean that you -- sufficient relevant  
14                   data doesn't indicate that it has to be a  
15                   document.

16 Q. So that's what I want to get at. So  
17 if you're an accountant and this is under the  
18 assumption of a tax engagement, you make an  
19 inquiry and you make that inquiry of the person  
20 who actually committed the fraud, and they say,  
21 oh, that entry, it's okay, and based on your  
22 testimony, that is sufficient and satisfies the  
23 duty to obtain sufficient relevant data, correct?

24 MS. FITZGERALD: Object to form.

25 A. That's not what I said. I said that

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you would ask the question and if the answer was  
okay, you don't need a particular document. So  
they would have asked the question and I don't  
know what was said, it's not necessarily the  
document what that was said, but they came to the  
conclusion based upon this work paper that it  
indicates that the explanation was reasonable to  
take the position that was being taken on the tax  
return, that's why they said okay, that's the way  
I interpret this document. I don't see -- I  
wouldn't interpret it any other way since it's an  
accountant's work paper.

14  
15  
16

Q. So we have to take Voynow's word for  
it that it was okay and that the explanation was  
reasonable, right?

17

A. Right.

18

Q. That's your testimony?

19  
20

A. Yes, I think that's what this work  
paper documents.

21  
22  
23

Q. You agree, do you not, that there is  
nothing that details or tells us anything as to  
what that explanation was?

24  
25

A. That's absolutely sure. I don't see  
an explanation here, but remember under the tax

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standards you can accept the document on its  
face, and only if you have a question, you ask a  
question to make sure that the tax treatment is  
right, and if the question gets answered in a  
manner that indicates the tax treatment is right,  
then it's a done deal in terms of meeting your  
professional responsibilities under the tax  
standards. Because the tax standards at most  
only require an inquiry.

11

Q. So under your testimony, an  
accountant who insulates themselves from any  
responsibility really has to ask a question which  
is raising the reasonable inquiry and then sign  
off OK without giving any explanation, and  
because it's in their work papers, that's  
sufficient?

18

MS. FITZGERALD: Objection.

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25

A. Look, that's the documentation that  
they met their professional standard requirements  
that's consistent with that documentation.  
Absent any other evidence, yeah, that would be  
the documentation that would indicate that they  
were doing what they were supposed to do in  
accordance with professional standards.